

901:10-6-01 Notice.

(A) Notice by publication.

1) Notices in general. All notices required or authorized by section 903.09 of the Revised Code shall be published once in a newspaper having general circulation in the county in which the facility is located or proposed to be located. Publication shall be done at least thirty days prior to a public meeting, provided that publication shall be done at least forty-five days prior to a public meeting for any draft permit to install or draft NPDES permit subject to an antidegradation review. Public notice is complete upon publication.

Public notice will be given for any draft general permit to be issued by the director. Since general permits are written to cover categories of discharges within a geographic or political area, the director may give one or more notices in newspapers of general circulation for those geographic or political areas identified in the general permit.

(2) Additional requirements for NPDES information. The department shall publish a public notice within thirty days regarding receipt of a NPDES permit application and permit to install for which an antidegradation review is applicable. The

purpose of public notice for a draft permit to install and a draft NPDES permit for which an antidegradation review is applicable shall be: to inform other potentially affected persons; to allow for inspection and review of the applications; to indicate whether any of the exclusions or waivers within the antidegradation rules apply to the applications; to instruct interested persons to contact the director within thirty days if they want to be on the interested parties mailing list as described in rule 901:10-6-05 of the Administrative Code for that particular permit to install or NPDES permit application; and to advertise the date, time, and place of any public meeting required under division (C) of section 903.09 of the Revised Code.

(3) The department shall give public notice of the issuance of a review compliance certificate issued pursuant to division (F) of section 903.04 of the Revised Code only to persons who own property that is contiguous to the facility for which the review compliance certificate is issued.

(4) The director shall publish notice of the issuance of a final permit once in a newspaper of general circulation in the county in which the facility is located.

(5) The director shall give public notice of the proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit, or for any actions pursuant to section 903.17 of the Revised Code.

(B) Notice by mail.

(1) The director shall mail notice of the issuance of a draft permit and a copy of the draft permit to the applicant or owner or operator and to the board of county commissioners of the county, the board of township trustees of the township, the local board of health and the local soil and water conservation district in which the facility is located or proposed to be located. The director shall also notify owners or operators of public water systems as that term is defined in section 6109.01 of the Revised Code that have a surface water intake structure located within ten miles downstream of the facility or proposed facility described in the draft permit.

(2) In addition, if an antidegradation review of a NPDES permit application indicates the potential to lower water quality, the director shall provide notice by mail to the Ohio department of natural resources, the

United States fish and wildlife service, any affected local areawide planning agencies and the Ohio department of development.

(3) The director shall mail notice of the proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit to the applicant or owner or operator and a copy of the proposed action to the board of county commissioners of the county and the board of township trustees of the township in which the facility is located or proposed to be located. The director shall also provide notice of the proposed action to deny, suspend, or revoke a NPDES permit to any other persons that are entitled to notice under the Federal Water Pollution Control Act.

(4) Notices shall be mailed by certified mail, return receipt requested, to the person subject thereto. Notices shall state the time and method by which the applicant or permit holder may request public meeting. A statement as to when a final permit will be issued may accompany draft permits.

(a) If a draft permit or proposed action is issued with an effective date and the permit is later signed by the director without being changed further, the department need not, at the time of entry, provide notice or a copy of the permit to the person subject thereto.

(b) If a draft permit or proposed action is issued without an effective date, and the department later assigns an effective date without changing the action further, the department shall mail notice to the person subject thereto informing the person of the effective date.

(5) If the applicable law grants a right to appeal the final permit or order of the director to the environmental review appeals commission, mailings required by this paragraph shall be accompanied by a notice stating the time and method by which the appeal must be filed.

) Notice of a public meeting is not required for the modification of a permit made with the consent of the permittee for the correction of typographical errors.

(D) The director may also hold a public meeting at the director's discretion, whenever, for example, such a public meeting might clarify one or more issues involved in the permit decision.

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Rule Amplifies: 903.01 , 903.02 , 903.03 , 903.04 , 903.07 , 903.08 , 903.081 , 903.082 , 903.09 , 903.10 , 903.17

Prior Effective Dates: 1/23/2009, 9/15/2005, 7/2/2002

901:10-6-02 Contents of public notices.

(A) Applicability. This rule applies to public notices for the issuance of or proposed actions to deny, suspend, modify, or revoke permits to install, permits to operate, and NPDES permits. This rule applies to the issuance of final orders pursuant to section 903.17 of the Revised Code. In addition, this rule applies to public notices for the receipt of applications for NPDES permits including notification of the public of an applicable antidegradation review under section 6111.12 of the Revised Code. Public notices shall include the following information:

(1) The name, address and telephone number of the office of the Ohio department of agriculture where department files and records pertaining to the proposed action or issuance are located and may be inspected and copied and instructions for persons desiring to obtain additional information, including the NPDES mailing list provided for in rule 901:10-6-05 of the Administrative Code

(2) The name and address of the applicant.

(3) A brief description of the applicant's activities or operations.

(4) The location of the facility and a short description of any discharge indicating whether any discharge is a new or an existing discharge.

(5) A concise statement of the draft permit or the proposed action.

(6) A statement:

(a) That any interested person may submit a written comment on the draft permit and may request a public meeting within thirty days of appearance of public notice in a newspaper in the affected county. A request for a public meeting shall be in writing and shall state the nature of the issues proposed to be raised in the public meeting; and

(b) That any person has a right to provide a written or oral statement for the record at the public meeting if a meeting is scheduled; and

(c) That one public meeting shall be held prior to issuance of any final permit decision when required by paragraph (C) of rule 901:10-6-04 and may be held where authorized by paragraph (D) of rule 901:10-6-01 of the Administrative Code.

(7) In addition, if the public notice is for an NPDES permit application or a draft permit on an NPDES permit the public notice shall contain the following information:

For a NPDES permit and permit to install application subject to an antidegradation review:

(a) A statement summarizing the receipt of an application for an NPDES permit where an antidegradation review is required;

(b) The date of issuance of the draft permit;

(c) A statement on the applicability of an antidegradation review in section 6111.12 of the Revised Code to indicate whether waivers or exclusions of the policy apply or to indicate an evaluation of issues related to lower water quality.

(d) A statement that the draft permit shall become final on an effective date or event specified therein,

unless:

(i) A public meeting is requested;

(ii) The director amends or withdraws the draft permit; or

(iii) The draft NPDES permit has been disapproved by the United States environmental protection agency in accordance with rule 901:10-3-06 of the Administrative Code; and

(e) A statement on the applicability of any of the requirements determined by the director in accordance with paragraph (D)(2) of rule 901:10-3-01 of the Administrative Code.

(B) Notice of NPDES permit applications to government agencies. The notice required by paragraph (A) of rule 901:10-6-01 of the Administrative Code to be given to state and governmental agencies shall include:

(1) The information required in this rule and may include a copy of such public notices.

(2) A statement that:

(a) An affected state or agency, unless covered by paragraph (B)(2)(b) of this rule, may submit written recommendations to the director and to the regional administrator of the United States environmental protection agency which the director may incorporate into the NPDES permit if issued, and that if the recommendation of the state or agency is not incorporated in the final permit, a written explanation of the director's reasons for not accepting the recommendation will be provided for that state or agency and the regional administrator of the United States environmental protection agency; and

(b) If an army corps of engineers district engineer submits written recommendations to the director advising that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of the NPDES permit, the director shall propose to deny the NPDES permit in accordance with division (F) of section 903.09 of the Revised Code, and the applicant shall be so notified. If the army corps of engineers district engineer advised the director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the director shall include the specified conditions in the permit.

(3) A copy of the fact sheet and a statement that a copy of the application for an NPDES permit or of the draft NPDES permit, including all ancillary papers, will be provided upon request.

(C) The notice required by paragraph (B) of this rule shall also be given, when applicable, to:

(1) Any agency responsible for an areawide waste treatment management plan pursuant to division (B) of section 208 (2004) of the Federal Water Pollution Control Act.

(2) Any agency responsible for the preparation of a plan pursuant to an approved continuing planning process under division (E) of section 303 (1972) of the Federal Water Pollution Control Act.

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Prior Effective Dates: 1/23/2009, 9/15/2005, 7/2/2002

901:10-6-03 Coordination of federal water pollution control act permit program with agencies of the United States.

A) Upon the director's issuance of a draft permit for an application to issue or modify a permit, the department shall transmit by certified mail a copy of the permit application and the draft NPDES permit to the regional administrator of the United States environmental protection agency, unless by written agreement the regional administrator has waived the right to receive, review, object, or comment upon a draft permit. If the regional administrator makes timely objection in writing to the issuance of the NPDES permit as being outside the requirements of the Federal Water Pollution Control Act, the permit shall not become final. The director may issue an amended draft permit after consideration of written comments or recommendations of the regional administrator, or may withdraw a draft permit.

(1) The director shall also transmit to the regional administrator of the United States environmental protection agency a copy of any significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any public meeting on any permit if:

(a) The regional administrator requests this information;

(b) The proposed permit contains requirements significantly different from those contained in the draft permit; or

(c) Significant comments objecting to the draft permit have been presented at the public meeting or in writing pursuant to the public notice. This does not apply to permits which by written agreement the regional administrator has waived the right to review and for which the United States environmental protection agency has not otherwise requested a receipt.

(2) Immediately following final issuance or modification or renewal of a permit under division (D) of section 903.09 of the Revised Code, the department shall transmit by first class mail a copy to the regional administrator.

(B) At the time of issuance of public notice of an application for issuance or modification of a permit pursuant to division (A) of section 903.09 of the Revised Code, for a discharge for which a fact sheet is prepared pursuant to rule 901:10-6-05 of the Administrative Code, the department shall transmit a copy of the fact sheet to the district engineer of the United States army corps of engineers for the district in which the discharge is located, unless by written agreement the district engineer has waived his right to receive a fact sheet for the discharge.

(C) The department shall, on or before the date of newspaper publication of a NPDES permit, provide the information specified in rule 901:10-6-02 of the Administrative Code to any affected state, interstate, federal, or local government agency having jurisdiction over fish, shellfish, and wildlife resources or over coastal zone management plans, the relevant state historic preservations office, and any affected Indian tribe.

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tutory Authority: 903.08 , 903.10

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Prior Effective Dates: 1/29/2007, 9/15/2005, 7/2/2002

901:10-6-04 Public meetings; close of the public comment period.

(A) Not later than thirty days after public notice of a draft permit, draft permit modification, or a proposed action to deny, suspend, or revoke a permit, any person may file a request for a public meeting. This paragraph does not apply to amended draft actions or to a NPDES permit application where an antidegradation review is required.

(B) Public meetings and antidegradation review and NPDES permits.

(1) Within ninety days of receipt of the application for any permit to install with a NPDES permit, the director shall hold a public meeting where an antidegradation review is required for any category three wetland, a designated outstanding national resource water, outstanding high quality water, state resource water or superior high quality water. The public meeting shall be for the purpose of evaluating issues related to lower water quality.

(2) Within ninety days of receipt of the application, the director shall hold a public meeting for any permit to install application and any NPDES permit application where the application indicates that an antidegradation review is required for general high quality waters other than category three wetlands and for limited quality waters, and the director also determines that there is significant public interest. This meeting is held concurrently with the meeting for the draft permit.

(C) If the director determines that there is significant public interest as described in paragraph (D) of this rule in a draft permit to install, permit to operate, NPDES permit, or modification of any permit, in the antidegradation review described in paragraph (B)(2) of this rule, or in any proposed action to deny, suspend, or revoke a permit, or where required to do so by statute or rule, the director shall hold one public meeting in the county where the facility is located or in a contiguous county. In consideration of an application for issuance of a permit, the director may hold one public meeting prior to issuance of a permit. When allowed by the antidegradation policy, the director shall hold the public meeting on antidegradation issues concurrently with any public meeting held for the draft permit.

The director may take other, reasonable steps to inform the public about draft permits, including fact sheets, brochures or other informal sessions with the public and the permittee.

The director may include representatives from other government departments, offices and agencies to participate in public meetings and otherwise invite these persons to provide pertinent information to the public.

(D) Significant public interest means statements made in writing by twenty or more persons expressing interest in the draft permit before the director or in the antidegradation review and requesting a public meeting. Significant public interest may also include expressed interest by one or more public officials.

(E) Public notice of the public meeting shall be published at least thirty days prior to the public meeting in a newspaper of general circulation and shall include:

(1) The address and telephone number of the office at the Ohio department of agriculture where department files and records pertaining to the proposed action or issuance are located and may be inspected and copied and instructions for persons desiring to obtain additional information, including the NPDES mailing list.

(2) The name and address of the applicant.

(3) The location of the facility and a short description of each existing or proposed discharge point and the name(s) of the receiving water(s).

(4) The date of issuance of the notice of the draft permit.

(5) The time, date, and location of the public meeting if applicable.

(6) A concise statement of the issues raised by those requesting a public meeting.

(7) A statement:

(a) That any interested person may appear and present written and/or oral statements, in person or by a representative.

(b) That the purpose of the meeting is to obtain additional information that will be limited to the criteria that are applicable to the permit application that is the subject of the public meeting and will be considered by the director prior to the director's taking final action on the draft permit under consideration.

(c) That a transcript, recording or other complete record will be made of the public meeting.

(F) In any public meeting, the director may appoint a presiding officer to conduct the meeting. The officer shall state at the beginning of the meeting the manner in which the meeting will be conducted, time limits for testifying, and any other procedures for conducting the meeting. Procedures and time limits may vary according to the number of people wishing to testify, the time the meeting starts, weather conditions and other situations affecting the length of the meeting. On the date and at the time and place specified in the notice, the public meeting shall be held at which any person:

) May appear and be heard in person or by a representative, or both;

(2) May present statements orally or in writing, or both. All comments whether written or oral shall be considered equally in making a final decision, provided that comments are submitted with the name and address of the person presenting the statements for the record.

(G) Any person requesting time to make an oral comment at the meeting must register their name and address prior to the beginning of the meeting. Persons shall be called to provide a statement for the record in the order of registration, unless the presiding officer determines otherwise.

(H) Information presented by any person shall be limited to the criteria and information that are applicable to the permit application that is the subject of the public meeting. The officer may rule out of order any person who does not address comments to the matter that is the subject of the public meeting.

(I) Persons attending the public meeting are authorized to tape or videotape the proceedings provided the following requirements are met:

(1) The hearing officer is notified at least twenty-four hours prior to the start of the public meeting unless prior notice is waived by the hearing officer; and

(2) The public meeting is not interrupted or disturbed.

Close of public comment period.

(1) Persons, including applicants, who believe any condition of a draft permit is inappropriate or that the director's tentative decision to deny, issue, or terminate a permit is inappropriate, must raise all

reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public meeting). Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the record in the same action, or consist of state or federal statutes and regulations, or other generally available reference materials. Commenters shall make supporting materials not already included in the record available to the director.

(2) At the time that any final permit action is issued the director shall issue a response to comments or "responsiveness summary."

(3) No final action shall be issued until after the director has considered the responsiveness summary . The responsiveness summary shall briefly describe and respond to all significant comments raised during the public comment period or during the public meeting on the draft permit action or, in the case of a NPDES permit with antidegradation applicability, the permit application. The responsiveness summary shall specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change.

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901:10-6-05 NPDES fact sheets.

(A) A fact sheet shall be prepared prior to issuance of a draft NPDES permit and NPDES permit modifications. The fact sheet shall include such information as may be required by federal statute or rule and may also include such additional information as the department deems desirable.

(B) The department shall maintain a mailing list of persons or groups requesting fact sheets and of persons or organizations who have expressed an interest in or may, by the nature of their purposes, their activities or their members, be affected by or have an interest in obtaining fact sheets for any of the following:

- (1) Any specified NPDES permits under section 903.08 of the Revised Code;
 - (2) Any antidegradation reviews associated with NPDES permits; and
 - (3) Any specified proceedings relating to applications for the specified NPDES permits or any antidegradation reviews or additional copies of fact sheets prepared, or other information desired.
- (C) All notices required or authorized for actions on NPDES permits or NPDES permit modifications shall be mailed to all persons on the mailing list of subscribers maintained for the issuance of NPDES permits.

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Prior Effective Dates: 7/2/2002, 9/15/2005

901:10-6-05 NPDES fact sheets.

(A) A fact sheet shall be prepared prior to issuance of a draft NPDES permit and NPDES permit modifications. The fact sheet shall include such information as may be required by federal statute or rule and may also include such additional information as the department deems desirable.

(B) The department shall maintain a mailing list of persons or groups requesting fact sheets and of persons or organizations who have expressed an interest in or may, by the nature of their purposes, their activities or their members, be affected by or have an interest in obtaining fact sheets for any of the following:

- (1) Any specified NPDES permits under section 903.08 of the Revised Code;
- (2) Any antidegradation reviews associated with NPDES permits; and
- (3) Any specified proceedings relating to applications for the specified NPDES permits or any antidegradation reviews or additional copies of fact sheets prepared, or other information desired.

(C) All notices required or authorized for actions on NPDES permits or NPDES permit modifications shall be mailed to all persons on the mailing list of subscribers maintained for the issuance of NPDES permits.

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Prior Effective Dates: 7/2/2002, 9/15/2005

901:10-6-06 Public information.

(A) The department shall maintain a mailing list of persons or groups interested in receiving copies of fact sheets as described in paragraph (B) of rule 901:10-6-05 of the Administrative Code, and public meeting notices issued or renewed in accordance with rules 901:10-6-01 and 901:10-6-02 of the Administrative Code. Persons interested in subscribing to the mailing list shall notify the director in writing and the director may assess fees to reflect the costs of copying and mailing to subscribers. In the alternative, the department may develop electronic methods to distribute the information described in this paragraph. The director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The director may delete from the list the name of any person who fails to respond to such a request.

(B) The department shall develop a mailing list by:

- (1) Including those persons who request in writing to be on the list;
- (2) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
- (3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental and agricultural bulletins or state law journals.

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